

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Welcome Solar, LLC	)	
Welcome Solar II, LLC	)	
Welcome Solar III, LLC	)	
Complainants,	)	Docket No. EL24-73-001
	)	
v.	)	
	)	
PJM Interconnection, L.L.C.	)	
Respondent.	)	
PJM Interconnection, L.L.C.	)	Docket Nos. ER24-994-002,
	)	ER24-995-002,
	)	and ER24-1001-002
	)	(not consolidated)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF PJM  
INTERCONNECTION, L.L.C.**

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rules 212 and 713 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure,<sup>1</sup> respectfully submits this Answer to the partial request for rehearing and request for clarification<sup>2</sup> of the Commission’s May 28, 2024 order in the captioned proceedings<sup>3</sup> filed by Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (collectively, “Welcome Solar”).

---

<sup>1</sup> 18 C.F.R. §§ 385.212, 385.713.

<sup>2</sup> *Welcome Solar, LLC, Welcome Solar II, LLC, Welcome Solar III, LLC v. PJM Interconnection, L.L.C.*, Partial Request for Rehearing and Request for Clarification of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket Nos. EL24-73-000, et al. (June 27, 2024) (“Rehearing Request”).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,118 (2024) (“May 28 Order”).

Welcome Solar requests that the Commission (1) reverse its finding that Welcome Solar failed to meet its burden under section 206 of the Federal Power Act (“FPA”)<sup>4</sup> to demonstrate that PJM declining to extend Welcome Solar’s milestones was unjust and unreasonable; (2) find that PJM did not exercise its unilateral discretion in a reasonable manner; and (3) direct PJM to engage in discussions with Welcome Solar to extend its milestone dates.<sup>5</sup> Welcome Solar also requests that the Commission clarify that PJM “failed to satisfy several additional threshold criteria” under the Tariff and the Welcome Solar ISAs before it could have “permissibly” terminated the Welcome Solar ISAs.<sup>6</sup>

Welcome Solar’s requests for rehearing and clarification essentially seek to strip PJM of its discretion under the PJM Open Access Transmission Tariff (“Tariff”) to extend service agreement milestone dates for a reasonable amount of time, if the developer meets the test.<sup>7</sup> Welcome Solar offers no evidence demonstrating that the Commission acted inconsistently with its own precedent in concluding that PJM properly exercised its discretion with respect to the Welcome Solar Interconnection Service

---

<sup>4</sup> 16 U.S.C. § 824e.

<sup>5</sup> Rehearing Request at 23. In support of its requested relief, Welcome Solar appends correspondence to the Rehearing Request between counsel for Welcome Solar and PJM regarding the milestones at issue in the May 28 Order. See Rehearing Request at Attachment A. Welcome Solar contends the correspondence demonstrates that “PJM continues to refuse to engage in discussions with Welcome Solar to extend the milestones that are contained in the currently effective Welcome Solar ISAs.” Rehearing Request at 23 n.121. The Commission should decline to consider Rehearing Request, Attachment A in its entirety, as new evidence on rehearing generally is impermissible, and in this proceeding specifically would be highly prejudicial. See *Ocean State Power II*, 69 FERC ¶ 61,146, at P 61,548 (1994) (“The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.”).

<sup>6</sup> See Rehearing Request at 24-25.

<sup>7</sup> See May 28 Order at PP 81-82. See also Tariff, section 212.5, which states that PJM may extend milestone dates “in the event of delays not caused by the Interconnection Customer, such as unforeseen regulatory or construction delays that could not be remedied by the Interconnection Customer through the exercise of due diligence.”

Agreements (“ISAs”).<sup>8</sup> Instead, Welcome Solar puts forth its own, novel “Key Considerations” standard to support its argument that PJM was obligated to extend the milestones that PJM had determined were breached. As demonstrated below, even if Welcome Solar’s self-developed “standard” applies, PJM’s actions with respect to the Welcome Solar ISAs satisfy it.

Similarly, Welcome Solar’s requested clarification is without merit. The May 28 Order properly turned on PJM’s burden, under FPA section 205,<sup>9</sup> to demonstrate that the Notices of Cancellation were just and reasonable.<sup>10</sup> Consideration of Welcome Solar’s “Additional Termination Criteria” are beyond the scope of the May 28 Order. The Commission therefore should deny the Rehearing Request.

## **I. MOTION FOR LEAVE TO ANSWER**

Although the Commission’s rules do not generally permit answers to requests for rehearing,<sup>11</sup> the Commission will accept such an answer where, as here, it assists the Commission in its decision-making process.<sup>12</sup> PJM, therefore, respectfully requests that the Commission accept this answer.

---

<sup>8</sup> See *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER24-994-000 (Jan. 24, 2024); *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER24-995-000 (Jan. 25, 2024); *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6239; Queue No. AE2-343, Docket No. ER24-1001-000 (Jan. 25, 2024) (collectively, “Notices of Cancellation”).

<sup>9</sup> 16 U.S.C. § 824d.

<sup>10</sup> May 28 Order at P 69 (“PJM bears the burden of proof under FPA section 205 to establish that accepting the notice of cancellation is just and reasonable and not unduly discriminatory”).

<sup>11</sup> 18 C.F.R. § 385.713(d).

<sup>12</sup> See, e.g., *Appalachian Power Co.*, 161 FERC ¶ 61,070, at P 15 (2017); *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,116, at P 1 n.3 (2014); *New England Power Pool*, 109 FERC ¶ 61,252, at P 12 (2004).

## II. ANSWER

### A. The Commission Correctly Determined that PJM Properly Exercised Its Discretion When It Declined to Extend the Welcome Solar Milestones.

#### 1. *The Commission's Determination that Extending Milestones (Or Not) Is "Wholly Within PJM's Discretion" Under Tariff, Section 212.5 Is Consistent with Prior Precedent.*

The May 28 Order concludes that Tariff, section 212.5, which governs milestones under a PJM ISA, puts the decision as to whether to extend milestone dates “wholly within PJM’s discretion.”<sup>13</sup> Specifically, Tariff, section 212.5 provides:

The Transmission Provider *may reasonably* extend any such milestone dates (including those required in order to proceed with an Interconnection Service Agreement) in the event of delays not caused by the Interconnection Customer, *such as* unforeseen regulatory or construction delays that could not be remedied by the Interconnection Customer through the exercise of due diligence.<sup>14</sup>

As the Commission reiterated in the May 28 Order, while PJM’s exercise of its discretion under this provision must be just and reasonable and is subject to Commission review, PJM is not obligated to extend project milestone dates.<sup>15</sup> That may be especially true when, as here, Welcome Solar missed certain pre-ISA milestone dates that PJM *had already reasonably extended* into the terms of the Welcome Solar ISAs.<sup>16</sup> Accordingly,

---

<sup>13</sup> May 28 Order at P 82 (“PJM was under no obligation to extend Welcome Solar’s milestones under the tariff, as the provision allowing for these extensions is wholly within PJM’s discretion.”).

<sup>14</sup> Tariff, section 212.5 (emphasis added).

<sup>15</sup> May 28 Order at P 82 (citing *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 43 (2022) (“*Chickahominy*”); *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,087, at P 33 (2022) (“*Gateway Energy Center*”)).

<sup>16</sup> See Tariff, section 212.5 (“In order to proceed with an Interconnection Service Agreement . . . a Generation Interconnection Customer must demonstrate that it has . . . signed a memorandum of understanding for the acquisition of major equipment . . .”). Acquisition of major equipment is a pre-ISA milestone because acquisition lead times often will determine the construction schedule for a generation project, as then reflected in the ISA milestones and the associated construction agreement. PJM previously extended the acquisition of major equipment milestone for Welcome Solar, LLC until July 31, 2022, for Welcome Solar II, LLC until July 31, 2022, and for Welcome Solar III, LLC until April 30, 2022. The fact that AB Carval purchased these projects from the originating developer on September 30, 2022, and only

the Commission concluded that Welcome Solar had not met its burden under FPA section 206 to show PJM's exercise of discretion in not extending Welcome Solar's milestones was unjust and unreasonable.<sup>17</sup>

In its Rehearing Request, Welcome Solar asks the Commission to reinterpret Tariff, section 212.5 to remove PJM's discretion (i.e., PJM "may") and replace it with an obligation (i.e., PJM "must"). Welcome Solar cites no legal precedent or Commission policy in support of this interpretation, but instead asks the Commission to read this obligation into its prior precedent where no such obligation exists. For example, Welcome Solar asks the Commission to read into its orders in *Gateway Energy Center* and *Chickahominy* a requirement for the Commission to evaluate whether PJM reasonably exercised its discretion "commensurate" with a *separate determination* that the underlying facts support such discretion.<sup>18</sup> Neither case imposes such a requirement, and the Rehearing Request should therefore be rejected.

In *Chickahominy*, the Commission accepted PJM's notice of cancellation terminating an ISA for failure to cure a breach, resulting in default.<sup>19</sup> In concluding that PJM reasonably exercised its discretion not to extend the project's milestones, the Commission specifically emphasized PJM's discretion under Tariff, section 212.5, holding that the Tariff "*provides PJM the option to extend milestone dates but does not require that PJM do so.*"<sup>20</sup> Indeed, while the Interconnection Customer argued that myriad circumstances outside its control warranted milestone extensions, the

---

*then* began to explore equipment acquisition, Request for Rehearing at 5, does not entitle Welcome Solar to additional milestone extensions.

<sup>17</sup> May 28 Order at P 82.

<sup>18</sup> Rehearing Request at 17 (citing *Chickahominy* at P 43; *Gateway Energy Center* at P 33).

<sup>19</sup> *Chickahominy* at PP 2, 38.

<sup>20</sup> *Chickahominy* at P 43 (emphasis added).

Commission simply concluded that “*PJM has the discretion* whether to extend the deadlines,” and endorsed the exercise of that discretion by pointing to the speculative nature of the project based on the record in the proceeding.<sup>21</sup>

Similarly, in *Gateway Energy Center*, the Commission concluded that PJM reasonably exercised its discretion under Tariff, section 212.5 not to extend project milestones and again highlighted that section 212.5 “provides PJM the option to extend milestone dates but does not require that PJM do so.”<sup>22</sup> Although the Commission went on to conclude that the project failed to obtain financing due to its own inaction, that conclusion was unrelated to the Commission’s plain finding that “adhering to the terms of the PJM Tariff provides an appropriate framework for considering [a] requested extension.”<sup>23</sup>

Welcome Solar’s attempts to reinvent prior Commission precedent are at odds with the plain language of Tariff, section 212.5, which the Commission has time and again found to be just and reasonable as applied. The Commission has never found that PJM’s unilateral discretion to extend milestones must be evaluated “commensurate with” some other finding on the record. As such, Welcome Solar has failed to demonstrate that the May 28 Order departs from Commission precedent. The Rehearing Request should therefore be denied.

2. *PJM’s Actions with Respect to the Welcome Solar ISAs Satisfy Welcome Solar’s “Key Considerations” Standard.*

Welcome Solar further argues that Commission precedent requires consideration of so-called “Key Considerations” to determine whether a transmission provider has

---

<sup>21</sup> *Id.* (emphasis added).

<sup>22</sup> *Gateway Energy Center* at P 33.

<sup>23</sup> *Id.* at P 32.

reasonably exercised its discretion.<sup>24</sup> Specifically, Welcome Solar asserts that these “Key Considerations” include (1) whether the delays prompting the milestone extension request were within the Interconnection Customer’s reasonable control; (2) whether the requested milestone extension will harm generators lower in the queue; and (3) whether an interconnection customer’s project is speculative or aspirational.<sup>25</sup> As argued above, Commission precedent does not impose any requirement for the Commission to evaluate PJM’s discretion as to milestone extensions through the lens of some other finding on the record. Assuming, *arguendo*, that the “Key Considerations” standard must be applied to the Welcome Solar ISAs, however, PJM’s exercise of discretion to decline to extend Welcome Solar’s milestone dates satisfies each prong of this invented “standard” and nothing in the May 28 Order changes this.

First, Welcome Solar has failed to demonstrate that the circumstances surrounding its requested milestone extensions were beyond Welcome Solar’s control.<sup>26</sup> As they have been throughout this proceeding, Welcome Solar’s demonstrations with respect to the milestones at issue in the Notices of Cancellation are contradictory, inconsistent, and misleading.<sup>27</sup> The May 28 Order made no findings as to Welcome Solar’s purported delays, and simply dismissed the Notices of Cancellation, without prejudice, given the conflicting evidence in the record and PJM’s burden of proof under

---

<sup>24</sup> Rehearing Request at 13.

<sup>25</sup> Rehearing Request at 13-14.

<sup>26</sup> See Rehearing Request at 22.

<sup>27</sup> *PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. EL24-73-000, at 13-14 (Feb. 28, 2024) (“Answer to Complaint”); *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. EL24-73-000, at 3-5 (Mar. 29, 2024).

FPA section 205.<sup>28</sup> Therefore, there is no reason to conclude that PJM's actions do not meet "Key Consideration" No. 1.

Second, as with any project that is in breach of its service agreement and has not cured its breach, allowing Welcome Solar's projects to remain in the PJM interconnection process would cause harm to other customers.<sup>29</sup> As PJM has explained, that harm manifests as unduly discriminatory treatment of other developers who meet their milestones, make adequate efforts to cure their breaches, or withdraw or have their ISAs terminated due to breach and failure to cure.<sup>30</sup> In other words, PJM also meets "Key Consideration" No. 2.

Further, despite Welcome Solar's insistence to the contrary, it has not demonstrated that its projects are anything other than speculative and keeping such speculative projects in the interconnection process also causes harm to other developers.<sup>31</sup> The May 28 Order makes no findings as to whether the breached milestones have been satisfied, and merely concludes that the record is "unclear" as to what actions Welcome Solar has taken to cure its breaches or why the actions Welcome Solar has taken to date are insufficient.<sup>32</sup> In addition, having such speculative, non-ready projects remain in the interconnection process allows those projects to take up Transmission System headroom that could be used by more viable projects. This is precisely the kind of delay caused by non-ready projects that contravenes the

---

<sup>28</sup> May 28 Order at PP 68-69.

<sup>29</sup> *See* Rehearing Request at 23.

<sup>30</sup> Answer to Complaint at 18-19.

<sup>31</sup> *See* Rehearing Request at 23.

<sup>32</sup> *See* May 28 Order at P 79.



Commission’s interconnection objectives.<sup>33</sup> Thus, PJM’s exercise of discretion also satisfies “Key Consideration” No. 3.

The Commission should reject Welcome Solar’s invention of a non-existent standard in Commission precedent. However, to the extent the so-called “Key Considerations” have any merit, PJM’s exercise of discretion satisfies the standard, fatally undermining the Request for Rehearing and providing another basis for the Commission to deny the Request for Rehearing.

**B. The “Additional Termination Criteria” Outlined in Welcome Solar’s Request for Clarification Are Beyond the Scope of the May 28 Order.**

Welcome Solar requests that the Commission clarify that PJM “failed to comply with the PJM Tariff, Welcome Solar ISAs and applicable precedent” with regard to certain arguments set forth in its pleadings that were not addressed in the May 28 Order.<sup>34</sup> These “Additional Termination Criteria,” as they are referred to in the Rehearing Request,<sup>35</sup> are beyond the scope of the Commission’s review of the Notices of Cancellation, and thus need not be considered.

As the May 28 Order notes, PJM filed the Notices of Cancellation pursuant to FPA section 205, which places the burden solely on PJM to demonstrate that the Notices of Cancellation were just and reasonable.<sup>36</sup> Welcome Solar asserts the Commission

---

<sup>33</sup> See *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at P 47 (decrying serial approach to interconnection requests that “creates incentives for interconnection customers to submit exploratory or speculative interconnection requests pursuant to which interconnection customers seek to secure valuable queue positions as early as possible, even if they are not prepared to move forward with the proposed generating facility”), *limited order on reh’g*, 185 FERC ¶ 61,063 (2023), *order on reh’g & clarification*, Order No. 2023-A, 186 FERC ¶ 61,199, at P 190 (2024), *appeals pending*, Petition for Review, *Advanced Energy United v. FERC*, Nos. 23-1282, et al. (D.C. Cir. Oct. 6, 2023).

<sup>34</sup> Rehearing Request at 24-25.

<sup>35</sup> Rehearing Request at 24.

<sup>36</sup> May 28 Order at P 69.

should clarify that PJM must satisfy Welcome Solar’s enumerated “Additional Termination Criteria” as a threshold requirement to any *future* proposed termination, as the May 28 Order dismissed the Notices of Cancellation without prejudice.<sup>37</sup>

Rather than listing the requirements for breach procedures under the Tariff, the “Additional Termination Criteria” repeat extraneous legal arguments included in Welcome Solar’s complaint that are not relevant to the question of whether PJM satisfied its burden under FPA section 205 to demonstrate that the Notices of Cancellation are just and reasonable.<sup>38</sup> As such, the Commission appropriately did not address these arguments in the May 28 Order, and rejected the Notices of Cancellation without prejudice.<sup>39</sup> To the extent Welcome Solar intends to contest any “future” termination of the Welcome Solar ISAs for failure to cure milestone breaches, it can raise its “Additional Termination Criteria” arguments to the Commission at the time such termination is filed. The request for clarification should therefore be rejected.

---

<sup>37</sup> Rehearing Request at 24-25.

<sup>38</sup> *See id.*; *see also* May 28 Order at P 80 (“[W]e find that PJM has not demonstrated that Welcome Solar has failed to satisfy the milestones under the Welcome Solar ISAs, and, as a result, we find that PJM has not met its burden under section 205 . . .”).

<sup>39</sup> May 28 Order at P 3 & ordering para. (A).

### III. CONCLUSION

For the reasons set forth above, the Commission should reject the Rehearing Request.

Respectfully submitted,

/s/ Elizabeth P. Trinkle

Wendy B. Warren  
Elizabeth P. Trinkle  
David S. Berman  
Wright & Talisman, P.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005  
(202) 393-1200 (phone)  
(202) 393-1240 (fax)  
[warren@wrightlaw.com](mailto:warren@wrightlaw.com)  
[trinkle@wrightlaw.com](mailto:trinkle@wrightlaw.com)  
[berman@wrightlaw.com](mailto:berman@wrightlaw.com)

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005  
(202) 423-4743 (phone)  
(202) 393-7741 (fax)  
[Craig.Glazer@pjm.com](mailto:Craig.Glazer@pjm.com)

Christopher Holt  
Managing Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd  
Audubon, PA 19403-2497  
(610) 666-2368  
[Christopher.Holt@pjm.com](mailto:Christopher.Holt@pjm.com)

*Counsel for PJM Interconnection, L.L.C.*

July 12, 2024

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 12th day of July 2024.

/s/ Elizabeth P. Trinkle

***Attorney for PJM Interconnection,  
L.L.C.***